

Translation

Rec'd PCT/PTO 29 APR 2005

PATENT COOPERATION TREATY

PCT/EP2003/012076



PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 100 893 a/se	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2003/012076	International filing date (day/month/year) 30 October 2003 (30.10.2003)	Priority date (day/month/year) 30 October 2002 (30.10.2002)
International Patent Classification (IPC) or national classification and IPC A61M 15/00		
Applicant PARI GMBH SPEZIALISTEN FÜR EFFEKTIVE INHALATION.. et al.		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☐ (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:

☐ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

☒ Box No. I Basis of the report

☐ Box No. II Priority

☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

☐ Box No. IV Lack of unity of invention

☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

☐ Box No. VI Certain documents cited

☐ Box No. VII Certain defects in the international application

☐ Box No. VIII Certain observations on the international application

Date of submission of the demand 26 May 2004 (26.05.2004)	Date of completion of this report 29 December 2004 (29.12.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2003/012076

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This report is based on translations from the original language into the following language _____, which is language of a translation furnished for the purpose of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☒ The international application as originally filed/furnished
- ☒ the description:
- pages _____ 1-16 _____, as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- pages _____ 1-15 _____, as originally filed/furnished
- pages* _____, as amended (together with any statement) under Article 19
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the drawings:
- pages _____ 1/5-5/5 _____, as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/EP 03/12076

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	2-7, 11, 13-15	YES
	Claims	1, 8-10, 12	NO
Inventive step (IS)	Claims		YES
	Claims	1-15	NO
Industrial applicability (IA)	Claims	1-15	YES
	Claims		NO

2. Citations and explanations

- 1.1 EP-A-1 219 314 (D1) discloses an inhalation therapy device with an vibratable membrane (50, 52), a vibration generating device (56), and a control device (see paragraph 34) as per the preamble of claim 1. In addition, D1 discloses that the presence of liquid that is to be atomised is detected on the basis of the impedance between the membrane (50, 52) and an electrode (38). The subjects of claims 1 and 12 do not therefore meet the requirements of PCT Article 33(2).
- 1.2 EP-A-1 005 917 (D3) and WO-A-03/057292 (D4) appear to disclose devices and methods which are covered by the wording of claims 1 and 12.
- 1.3 The features of claims 1-8 also appear to be known from D1. These claims do not therefore meet the requirements of PCT Article 33(2).
- 1.4 WO-A-93/09881 (D2) discloses a similar inhalation therapy device in which current uptake at different signal frequencies is measured to determine the presence of the liquid. A person skilled in the art would therefore arrive at the subject matter of

claims 2, 3 and 13. In addition, the features of claims 5-7, 14 and 15 are also suggested by D2. Furthermore, the feature of claim 4 appears to be one of a number obvious possibilities from which a person skilled in the art would choose according to the circumstances to solve the problem of interest, without thereby being inventive. These claims do not therefore meet the requirements of PCT Article 33(3).

1.6 The industrial applicability (PCT Article 33(4)) of a device as per claims 1-11 is clear.

1.7 An **inhalation therapy method** is a method of therapy, which is not industrially applicable. However, method claims 12-15 appear to define a method for controlling an inhalation device. Such a method appears to be industrially applicable (PCT Article 33(4)).